

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM J. DICKEY
Claimant

VS.

USD 259
Respondent

AND

SELF-INSURED
Insurance Carrier

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Docket No. 242,050

ORDER

The respondent appealed the preliminary hearing Order dated July 9, 1999, entered by Administrative Law Judge Jon L. Frobish.

ISSUES

The respondent filed an Application for Hearing with the Director alleging that claimant was injured on April 7, 1997, while working for the respondent. Respondent requested a preliminary hearing seeking a determination that claimant was an employee of the respondent.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Mr. Dickey was injured on April 7, 1997, while helping to clean a shop where he attended courses at the Wichita Area Technical College.
2. At the time of the accident, Mr. Dickey was a student taking automobile mechanic courses at the technical college, which is an institution of USD 259.
3. The accident occurred during the time scheduled for Mr. Dickey's transmission course. Instead of conducting class, the course instructor directed Mr. Dickey and other students to clean the shop area in preparation for a national competition.

4. Mr. Dickey is not requesting workers compensation benefits. He contends he was a student at the technical college and was neither an employee nor an apprentice at the time of the accident.

CONCLUSIONS OF LAW

This is not a preliminary hearing held pursuant to K.S.A. 1998 Supp. 44-534a where an injured worker is seeking benefits or where an employer is seeking relief from an existing preliminary award. Instead, this is a request from USD 259 seeking an opinion whether the employer/employee relationship existed in the event Mr. Dickey should ever claim workers compensation benefits for the April 7, 1997 accident. Because Mr. Dickey has not claimed workers compensation benefits, the relief that USD 259 seeks is in the nature of an advisory opinion or declaratory judgment.

Because Mr. Dickey is not claiming benefits under the Workers Compensation Act, there is no justiciable controversy for the Division of Workers Compensation to decide. The Legislature did not intend for the Act to be used as a vehicle to obtain advisory opinions on matters that are not in actual controversy or ripe for decision. Therefore, this appeal should be dismissed.

Should USD 259 sincerely believe that the employer/employee relationship existed between it and Mr. Dickey, it may voluntarily begin providing benefits as the Act is self-enacting and an order requiring the payment of benefits is not required.

WHEREFORE, the Appeals Board dismisses the respondent's appeal.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul V. Dugan Jr., Wichita, KS
Robert G. Martin, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director